

HOUSE BILL 3390

By DuBois

AN ACT to amend Tennessee Code Annotated, Title 24,
Chapter 7, Part 1, relative to admissibility of an
apology in a medical malpractice case.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The general assembly finds that conduct, statements, or activity constituting voluntary offers of assistance or expressions of benevolence, regret, mistake, error, sympathy, or apology between or among parties or potential parties to a civil action should be encouraged and should not be considered an admission of liability. The general assembly further finds that such conduct, statements, or activity should be particularly encouraged between health care providers, health care institutions, and patients experiencing an unanticipated outcome resulting from their medical care. Regulatory and accreditation agencies are in some instances requiring health care providers and health care institutions to discuss the outcomes of their medical care and treatment with their patients, including unanticipated outcomes, and studies have shown such discussions foster improved communications and respect between provider and patient, promote quicker recovery by the patient, and reduce the incidence of claims and lawsuits arising out of such unanticipated outcomes. The general assembly, therefore, concludes certain steps should be taken to promote such conduct, statements, or activity by limiting their admissibility in civil actions.

SECTION 2. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by adding the following as a new section in that part:

24-7-____.

(a) This section applies to:

(1) Any civil action brought by an alleged recipient of an unanticipated outcome of health care, their relative, or their representative, or in any mediation

or arbitration proceeding, or other alternative dispute resolution proceeding related to such civil action; or

(2) Any proceeding conducted by a public or private entity that is related to such unanticipated health care outcome, including, but not limited to, disciplinary proceedings, licensure proceedings, credentialing proceedings, peer review proceedings, and certification or recertification proceedings.

(b) In any action or proceeding described in subdivision (a)(1) or (a)(2), any and all statements, affirmations, writings, gestures, or conduct expressing apology, fault, sympathy, commiseration, regret, condolence, compassion, error, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the alleged recipient, a relative of the alleged recipient, or a representative of the alleged recipient and which relate to the discomfort, pain, suffering, injury, or death of the alleged recipient as the result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest, or for any other purpose, including impeachment.

(c) Offers to provide corrective or remedial treatment or gratuitous acts to help the alleged recipient shall be inadmissible as well.

(d) For purposes of this section, unless the context otherwise requires:

(1) "Health care provider" means any person licensed or certified pursuant to title 63 or title 68 to deliver health care and any clinic, health dispensary, or health facility licensed by the state of Tennessee pursuant to title 68. "Health care provider" includes any professional corporation or other professional entity comprised of such health care providers as permitted by the laws of this state;

(2) "Relative" means the alleged recipient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. "Relative" includes such relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a recipient;

(3) "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a health care power of attorney or advance directive, or any person recognized in law or custom as a recipient's agent; and

(4) "Unanticipated health care outcome" means the outcome of a medical treatment, service, or procedure that differs from an expected result.

SECTION 3. This act shall take effect on July 1, 2008, the public welfare requiring it.